Supreme Court, U. S.
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No. 78-676

In the Supreme Court of the United States

OCTOBER TERM, 1978

THE HICKOK ELECTRICAL INSTRUMENT COMPANY,
PETITIONER

v.

TEKTRONIX, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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The judgment of the Court of Claims in this civil case was entered on April 19, 1978, and the court denied a petition for rehearing on May 26, 1978 (Pet. 2). Petitioner did not obtain an extension of time within which to file a petition for a writ of certiorari,* and the 90 days provided by 28 U.S.C. 2101(c) expired on August 24, 1978. The petition was filed on October 20, 1978, and accordingly is

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*Petitioner refers (Pet. 2) to extensions of time within which to file a petition. The extensions were obtained by the United States, not by petitioner. Apparently seeking to take advantage of the extensions, petitioner moves for leave to proceed on behalf of the United States. But 28 U.S.C. 516 and 518(a) provide that only the Attorney General and Solicitor General may represent the United States in this Court. The Solicitor General has decided not to file a petition for a writ of certiorari in this case. As petitioner emphasizes (Motion 3-4), it may ultimately be held liable to indemnify the United States. Its interests thus are potentially adverse to those of the United States, and it could have obtained its own extension of time within which to seek review.

out of time. The time limit provided by Section 2101(c) is jurisdictional. *Department of Banking* v. *Pink*, 317 U.S. 264. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

NOVEMBER 1978